

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

2019 FEB 14 PM 3:11

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DOUGLAS JOHNSTON,

*Plaintiff,*

v.

TOM YENNERELL in his official  
capacity as Town Manager, and  
TOWN OF SPRINGFIELD,  
VERMONT

*Defendants.*

Docket No.: 2:19-cv-30

**COMPLAINT**

Now Comes the Plaintiff, Douglas Johnston (“the Chief”), by his attorneys, and complains against the Defendants as follows:

Nature of Action

1. This action arises out of Plaintiff’s termination as Police Chief for the Springfield Vermont Police Department. Plaintiff was terminated for without cause, without any notice, and without any hearing that comported with basic constitutionally mandated due process rights. Defendants simply issued Plaintiff a letter stating, without explanation, he was fired. See Exhibit A attached to this Complaint.

2. Plaintiff was an exemplary police officer who admirably served the Town of Springfield for 40 years, approximately, 20 years of which he was the Chief of Police. During that time, the Chief’s performance was outstanding. There was never just cause to support his termination. He is seeking damages as well as attorney’s fees for the Defendants’ flagrant, malicious and intentional violation of his due process rights and his wrongful termination.

Parties

3. The Cheif is a resident of Springfield, Vermont and served as Chief of the Springfield Vermont Police Department until his unexplained termination on February 4, 2019.

4. Defendant Tom Yennerell (“Yennerell”) was at all relevant times the Town Manager of Springfield, Vermont. Yennerell was authorized by the Town to act in a managerial capacity and to hire and terminate Town employees. Yennerell’s conduct in connection with this matter was within the scope of the authority provided by Springfield to him, and is therefore binding on Springfield.

5. Defendant Town of Springfield (“Springfield”) is a Vermont municipality in Windsor County.

Jurisdiction and Venue

6. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1343. Supplemental jurisdiction over state law claims is provided by 28 U.S.C. § 1367.

Facts

7. Plaintiff was employed for over forty years with the Springfield Vermont Police Department.

8. After exemplary service and outstanding work, the Chief was eventually promoted to Chief of Police. Over the course of the many years that he served as Chief of Police, Springfield continually provided positive feedback to the Chief in terms of his work performance. At no time, was there ever any legitimate indication that the Chief’s performance was unsatisfactory. It was widely acknowledged that the Chief was an excellent law enforcement officer and Chief of Police.

9. On February 4, 2019, Plaintiff was suddenly terminated without any advanced notice and without cause. Yennerell would not identify any good cause for the termination.

10. In an effort to determine why he was being terminated, Plaintiff met with Yennerell, on February 4, 2019. Yennerell would not identify any good faith reason for why Plaintiff was being terminated.

11. In fact, Yennerell stated to the Chief that he did not “feel comfortable” about telling the Chief why he was being terminated.

12. To date, no cogent explanation has been given for why the Chief was terminated nor has the Chief been provided any hearing or other venue in which to contest the basis for his termination. Defendants failed to follow the required procedures for termination of a Chief of Police because they knew that there was not just cause to support his termination.

Count I – 42 U.S.C. § 1983 (procedural due process)

13. Plaintiff repeats and realleges the foregoing allegations as if set forth herein.

14. All Defendants are state actors in relation to Section 1983.

15. Under 24 V.S.A. § 1931, Police Chiefs are considered police officers for purposes of 24 V.S.A. § 1932. Under section 1932, any municipality that seeks to terminate a chief of police is required to follow specific due process. The process includes a presentation of written charges against the chief. The chief then must be provided by the town with an opportunity to contest the charges in an evidentiary hearing held before the town selectboard, all before he may be terminated. Then, the chief of police may only be terminated if there is just cause to support the termination. Any competent town manager or selectboard should be aware of the statutory requirements to terminate a chief of police.

16. Further, under federal law, any employee who has greater than at will rights, is entitled to due process before and after termination. See, e.g., Ciambriello v. Cnty. of Nassau, 292 F.3d 307, 313 (2d Cir. 2002). The process due before termination is an articulation of the charges

against the employee and a fair and full opportunity to respond. After termination, the employee must be offered an opportunity to contest the allegations in a hearing before a neutral party. Alternatively, where state law identifies due process for termination of a public employee, that state law process must be followed. A failure to comply with due process constitutes a violation of federal constitutional rights.

17. The Chief, by virtue of contract law and Vermont statutes, had greater than at will rights. He could only be terminated for cause. As a public employee who could only be terminated for cause, Plaintiff had a federally protected property interest in his continued employment as police chief. See U.S. Const., amend. XIV, § 1.

18. Defendants deprived Plaintiff of his due process rights protected by the Fourteenth Amendment by failing to provide Plaintiff with notice and an opportunity to be heard before he was terminated when it failed to follow state law in connection with his termination.

19. In addition, Defendants deprived Plaintiff of his due process rights protected by the Fourteenth Amendment by failing to provide any basis for his termination. Further, Defendants violated the Chief's due process rights by failing to offer a contested hearing pursuant to state and federal law.

20. In terminating Plaintiff, Defendants acted under color of state law.

21. As a result of Defendants' conduct, Plaintiff has suffered emotional harm and embarrassment in addition to lost pay and benefits.

#### Count II—Breach of Contract

22. Plaintiff repeats and realleges the foregoing allegations as if set forth herein.

23. Defendants have adopted policies in the Town of Springfield, Vermont Personnel Rules and Regulations.

24. These policies provide that Plaintiff may only be disciplined up to and including termination “for cause.”

25. In addition, under Vermont law, any municipality that seeks to terminate a Chief of Police is required to follow specific due process. This statutory requirement is an implied provision of the Town of Springfield, Vermont Personnel Rules and Regulations.

26. The policies also include a number of procedural protections, including the right to notice, a grievance procedure, and an appeal.

27. The policies constitute a binding contract between Plaintiff and Defendants.

28. In order to terminate Plaintiff, there must have been just cause to support the termination.

29. Defendants have provided no basis whatsoever for their decision to terminate Plaintiff.

30. In addition, Defendants were required to follow their contractual procedures as well as the mandated procedures outlined by Vermont law and implied into Defendants’ policies.

31. Defendants failed to comply with their contractual obligations as stated in Defendants’ policies.

32. By terminating Plaintiff without compliance with the policies, Defendants have breached their obligations under the policies.

33. As a result of Defendants’ breach, Plaintiff has suffered and continues to suffer damages.

34. Plaintiff is entitled to compensation for Defendants’ breach.

Count III—Breach of Covenant of Good Faith and Fair Dealing

35. Plaintiff repeats and realleges the foregoing allegations as if set forth herein.

36. The law implies in every contract a covenant of good faith and fair dealing.

37. Through the conduct alleged above, Defendants have breached the covenant of good faith and fair dealing that is implicit to the Town of Springfield, Vermont Personnel Rules and Regulations.

38. As a direct and proximate result of Defendants' breach, Plaintiff has suffered and continues to suffer damages.

Count IV—Punitive Damages

39. Plaintiff repeats and realleges the foregoing allegations as if set forth herein.

40. Defendants were aware of the procedural protections owing to Plaintiff—both under the Fourteenth Amendment and under the Town of Springfield, Vermont Personnel Rules and Regulations.

41. Plaintiff attempted to communicate with Defendants about the reason for his termination, but Defendants refused to provide a basis for his termination. Upon information and belief, the basis for this refusal was a personal animus by Defendant Yennerell.

42. The Town of Springfield has ratified the decision of Defendant Yennerell by refusing to act or correct Yennerell's improper and unlawful termination of Plaintiff.

43. Plaintiff is entitled to punitive damages.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- (a) awarding him compensatory and punitive damages in an amount to be determined at trial;
- (b) awarding him reasonable attorney's fees, interests, and costs; and
- (d) awarding him such other relief as the court deems just.

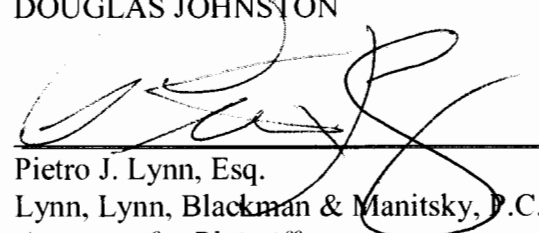
Jury Demand

Plaintiff demands a jury trial on all counts so triable.

Dated at Burlington, Vermont this 14<sup>th</sup> day of February, 2019.

DOUGLAS JOHNSTON

By:



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